

United States District Court Northern District
of Alabama

FILED

2014 Feb-27 AM 09:08
U.S. DISTRICT COURT
N.D. OF ALABAMA

DARRIOUS Mabry

Plaintiff,

vs.

Matthew L. Moore,
et al.,
Defendants

2014 FEB 26 A 11:32

Civil Action No.

4:13-cv-00199-KOB-HGD

Motion For Leave To File An Amended Complaint

Plaintiff DARRIOUS Mabry, pursuant to Rules 15(a) and 19(a), Fed. R. Civ. P., Request leave to file an amended complaint adding actual facts and eye witness.

In the order for special report dated 2-7-14, the Court specified that the plaintiff is required to notify the Court within 20 days that plaintiff's notice must describe specifically and in detail any error in the Court's reading and understanding of the claims pled, setting forth the true nature of the claim or claims plaintiff intended to plead in his original complaint. The court allowed plaintiff to freely amend the complaint and to add parties or claims before the 20 days of the special order report expires

1. The plaintiff in his original complaint failed to mention that defendant Matthew L. Moore made written admissions to the plaintiff's allegations in the original complaint. Defendant Matthew L. Moore made verbal and written

admissions to exiting his assigned cubicle and striking the plaintiff. see "Classification Summary" Exhibit B

2. Plaintiff failed to mention that Warden Patrice Richie disapproved the disciplinary findings of guilty with justification stating, "This incident was due to the arresting officer exiting the cubicle to confront the inmate inside of the block." see "Disciplinary Report" Exhibit A page 4

3. Plaintiff alleges that he has actual eye witness to the incident and wishes to present declaration by this witness in support of these claims. see "declaration" Exhibit C

4. Furthermore in the order for special report on page 4 paragraph 2 there was an error in the court's reading and understanding of the claims pled, specifically stating that the plaintiff suffered a broken nose. This statement was not made by the plaintiff. Plaintiff never alleged having a broken nose. Plaintiff would like to clarify this to the court.

In the United States District Court
For the Northern District of Alabama

FILED

Darrious Mabry,

Plaintiff

v.

Matthew L. Moore,
et al.,

Defendants

2014 FEB 26 A 11:32

Declaration OF
Nigel Sanders

Civil Action No. 4:13-cv-00199-KOB-H6D

Nigel Sanders hereby declares:

I was incarcerated at St. Clair Correctional Facility for 5 years. From 3-14-2010 until 3-27-2013 I was housed in Q1 Block. I was housed in Q1-12 cell which is across from Q1-14 cell. Darrious Mabry was housed in Q1-14 cell.

On Oct. 29, 2012, I saw Officer Matthew Moore exit the cubicle and enter the cell block. A few minutes later I seen Officer Matthew Moore push and began striking Darrious Mabry. I heard Darrious Mabry cry out. It sounded like he was in pain. After Officer Matthew Moore stopped striking Darrious Mabry, I seen Darrious Mabry run out of the block towards the Shift office.

Exhibit-C

A Few months later, they transferred me and Darrious Mabry to William E. Donaldson Correctional Facility.

I declare under penalty of perjury that the foregoing is true and correct. Executed at William E. Donaldson on Feb. 10, 2014.

Nigel Sanders #215316 A-14
W. E. DONALDSON
100 - WARRIOR LANE
BESSEMER, AL 35023

Nigel Sanders

Mabry, Darinus
201108

B-13

ALABAMA DEPARTMENT OF CORRECTIONS
CLASSIFICATION SUMMARY

CLAS001

INMATE CLASSIFICATION SECURITY LEVEL - (CLAS012)

AIS : 00261108

I. Security Level indicated by score. 5
II. Recommended Security Level. 5

Security Restrictions: None

Comments: RECLASS: According to Incident Report SCCF-12-01792 while Officer Moore was assigned to Q-Cubicle, he verbally reprimanded inmate Mabry for being continually in and out of the cellblock. Officer Moore then opened the cubicle door, entered Q-1 Cellblock and confronted inmate Mabry and a physical altercation ensued between Officer Moore and Inmate Mabry. Officer Moore pushed inmate Mabry backwards to create some space between them, then inmate Mabry punched Officer Moore in the face striking his nose. Officer Moore sustained a broken nose and a concussion and had to be transported to a free world hospital for medical treatment. Inmate Mabry was found not guilty of RV# 902, with justification being "this incident was due to the arresting officer exiting the cubicle to confront the inmate inside of the block". Despite Mabry being found not guilty during his disciplinary hearing recommend a custody increase to CLOSE due to the details of the incident report.

Comments:

Institution Recommendation RECLASS: According to Incident Report SCCF-12-01792 while Officer Moore was assigned to Q-Cubicle, he verbally reprimanded inmate Mabry for being continually in and out of the cellblock. Officer Moore then opened the cubicle door, entered Q-1 Cellblock and confronted inmate Mabry and a physical altercation ensued between Officer Moore and Inmate Mabry. Officer Moore pushed inmate Mabry backwards to create some space between them, then inmate Mabry punched Officer Moore in the face striking his nose. Officer Moore sustained a broken nose and a concussion and had to be transported to a free world hospital for medical treatment. Inmate Mabry was found not guilty of RV# 902, with justification being "this incident was due to the arresting officer exiting the cubicle to confront the inmate inside of the block". Despite Mabry being found not guilty during his disciplinary hearing recommend a custody increase to CLOSE due to the details of the incident report.

Psych Associate Review I agree. PLH
Warden Review concur. close. jh

Title	Custody	Sec Lvl	Date
Specialist Final Review And Submission docal\brittney.stallworth	CLOSE	5	01/17/2013
Central Review Board 1 docal\stan.dean Reason : Other security considerations* (specify) Comments : Remain medium/SL V. The assault disciplinary was disapproved by Warden Richie.	MEDIUM	5	01/28/2013
Central Review Board 2 docal\bobby.maclean Comments : This case was discussed with the Acting Director of Classification - Close custody is not being approved because the disc for Assault On An Officer was disapproved by the Warden - med/admin seg is being approved. Mabry needs to be moved from St. Clair - the ISRB at the receiving institution can determine when to release him to general pop.	MEDIUM	5	01/28/2013
Complete	MEDIUM	5	01/28/2013

(Transfer)

Approved

C. Classification Summary - "Central Review Board"

Mabry

Alabama Department of Corrections

DISCIPLINARY REPORT

403A (1-4)

DISC001

Scanned

Incident Report Number: SCCF-12-01792

1. Inmate: MABRY, DARIUS

Custody: MEDIUM

AIS: 00261108

2. Institution: ST.CLAIR CORRECTIONAL FAC.

Disc #: SCCF-12-01792-1

3. The above inmate is being charged by: MOORE, MATTHEW L

with a violation of the following Rule(s):

902 - Assault on a Person(s) associated with ADOC

From Administrative Regulation #403, which occurred on or about:

Oct 29 2012 5:45PM at Q-1

A hearing on this charge will be held after 24 hours from being served.

4. Circumstances of the violation(s) are as follows:

On October 29, 2012, at approximately 5:45 pm., you inmate Darius Mabry, B/261108, did assault Officer Matthew Moore in the Q-1 cellblock by punching Officer Moore in the face with your fist.

10/29/2012

Date

MOORE, MATTHEW L / Officer

Arresting Officer / Title

5. I hereby certify that on this 2nd day of November, 2012, at (time) 4:35 (am/pm), I have personally served a copy of the foregoing upon the above named inmate and I have informed the inmate of his/her right to present oral or written statement at the hearing and to present written questions for the witnesses.

Daniel R. Thorne

Serving Officer's Signature

x Darius Mabry 261108

Inmate's Signature / AIS Number

6. Witnesses desired?

NO:

Inmate's Signature

YES:

Darius Mabry

Inmate's Signature

7. If yes, list:

AIS:

NAME:

Officer Christian

AIS:

NAME:

Sgt Heflin

AIS:

NAME:

Sgt Wootch

Final Copy of Disciplinary

Exhibit-A

DISCIPLINARY REPORT

403A Warden Decision

Incident Report Number: SCCF-12-01792

1. Inmate: MABRY, DARIUS

Custody: MEDIUM

AIS: 00261108

2. Institution: ST. CLAIR CORRECTIONAL FAC.

Disc #: SCCF-12-01792-1

3. The above inmate is being charged by: MOORE, MATTHEW L

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On October 29, 2012, at approximately 5:45 pm., you inmate Darius Mabry, B/261108, did assault Officer Matthew Moore in the Q-1 cellblock by punching Officer Moore in the face with your fist.

10/29/2012

Date

MOORE, MATTHEW L / Officer

Arresting Officer / Title

5. I hereby certify that on this 2nd day of November, 2012, at (time) 16:35:00, I have personally served a copy of the foregoing upon the above named inmate and I have informed the inmate of his/her right to present oral or written statement at the hearing and to present written questions for the witnesses.

THOMAS, DAVID R

Serving Officer's Name

See Signed 403A (1-4)

Inmate's Signature / AIS Number

6. Witnesses desired?

NO: _____

Inmate's Signature

YES: See Signed 403A (1-4)

Inmate's Signature

7. If yes, list:

CHRISTIAN, JOEL R

HEFLIN, KENNETH V

NORTHCUTT, WILLIAM C

8. Hearing Date: November 13, 2012

Time: 14:00:00

Place: segregation Unit

9. Inmate must be present in Hearing Room. If he / she is not present, explain in detail on additional page and attach.

10. The Arresting Official, Inmate, and all Witnesses were sworn to tell the truth.

MALONE, GARY W

Hearing Officer

11. A finding is made that the inmate is capable of representing himself / herself.

MALONE, GARY W

Hearing Officer

12. Plea: MABRY, DARIUS / 00261108

Not Guilty

13. Arresting Official's testimony (at the hearing):

On October 29, 2012 at approximately 5:45pm., you inmate Darius Mabry, B/261108, did assault Officer Matthew Moore in Q-1 cellblock by punching Officer Moore in the face with his fist.

14. Inmate's testimony:

Written statement attached 1 of 3 pages.

DISCIPLINARY REPORT CONTINUATION SCCF-12-01792-1

403A Warden Decision

14a Witness: CHRISTIAN, JOEL R
Testimony: Did not want to make a statement
14a Witness: HEFLIN, KENNETH V
Testimony: Inmate Mabry, came to speak with me in the chow hall, while I was feeding the evening meal and I told him that I would speak with him after chow was over and not to go around officer Moore. Inmate Mabry stated ok and left the dining hall.
14a Witness: NORTHCUTT, WILLIAM C
Testimony: I was not there when the incident took place.

15. The inmate was allowed to submit question(s) to all witnesses. Copy of questions and answers are attached.

MALONE, GARY W
Hearing Officer

16. The following witnesses were not called:

17. After hearing all of the testimony, the Hearing Officer makes the following findings of fact (Be Specific):

The hearing Officer finds that:

Inmate Darius Mabry B/261108 and Officer Matthew Moore were in a physical altercation October 29, 2012 in Q-1 cell block. Inmate Mabry and Officer Moore stated in their testimony that they were in a physical altercation.

18. Basis for finding of fact:

I believe the arresting Officer and inmate Darius Mabry B/261108, sworn testimony that they were in a physical altercation in Q-1 cell block, which can be proven by doc body chart as well as the written statements.

19. Hearing Officer's decision:

☒ Guilty

☐ Not Guilty

20. Hearing Officer's recommendation of sanction(s) to be taken against this inmate:

- | | | | |
|-------------------------------------|--|------------------------------------|--|
| <input type="checkbox"/> | Counseling / Warning | | |
| <input type="checkbox"/> | Extra Duty for ____ days at ____ hours per day under supervision _____ Shift | | |
| <input type="checkbox"/> | Loss of Outside privileges for ____ days | Community Based Institutions Only: | |
| <input checked="" type="checkbox"/> | Loss of Canteen privileges for 30 days | <input type="checkbox"/> | Draw cut to _____ (minimum \$25) |
| <input checked="" type="checkbox"/> | Loss of Telephone privileges for 30 days | <input type="checkbox"/> | Restriction / State Whites for ____ days |
| <input checked="" type="checkbox"/> | Loss of Visiting privileges for 30 days | <input type="checkbox"/> | Loss of Passes for ____ days |
| <input type="checkbox"/> | Removal from Hobby Craft | <input type="checkbox"/> | Return to Inmate Staff for ____ days |
| <input type="checkbox"/> | Loss of Good Time ____ yrs ____ mths ____ dys | | |
| <input checked="" type="checkbox"/> | Disciplinary Seg for 30 days | | |
| <input checked="" type="checkbox"/> | Recommend Custody Review | | |
| <input type="checkbox"/> | Recommend Job Change | | |
| <input type="checkbox"/> | Financial Compensation _____ | | |

MALONE, GARY W
Hearing Officer

21. Warden's Action - Date: 11/21/2012

31

Approved _____

DISCIPLINARY REPORT CONTINUATION SCCF-12-01792-1

403A Warden Decision

Disapproved Patrice Richie / This incident was due to the arresting officer exiting the cubicle to confront the inmate inside of the block.

Other (specify) _____

22. I hereby certify that a completed copy of the foregoing Disciplinary Report was served on the above named Inmate on this the 21 day of November, 20 12 at (time) 11:56 (am / pm).

23. Chlyke R. Co
Serving Officer's Signature / Title

Patrice Richie
Inmate's Signature / AIS Number

Distribution: Original to Central Records Division
Copy to: I & I (If Federal or State law violated)
Inmate Institutional File
Board of Pardons and Parole
Sentencing Judge (if applicable)

11/16/12. Questions for Sgt. Northcutt Scanned 12-07-90

1. Did I try to speak with you before this incident with Officer Matthew L. Moore took place? ~~He~~ ^{she} ~~didn't~~ didn't tell me which officer.
2. What did you tell me to do when I came to you?
Go speak with Sgt. Heflin.
3. Is a A.D.O.C. officer allowed to leave his cubicle unattended and enter a cellblock without permission from a supervisor? No
4. What would be the punishment if an Officer did in fact violate the rules and ~~leave~~ ^{left} his assigned cubicle unattended to enter a cellblock?
5. Did Officer Matthew L. Moore have permission to leave his assigned cubicle unattended and enter Q-1 cellblock at or around 5:45 pm on 10-29-12? Don't know
6. What was Officer ~~Matthew~~ ^{Matthew} L. Moore's punishment for leaving his assigned cubicle unattended and entering Q1-cellblock?
7. At any time at or around 5:45 pm on 10-29-12 did Officer Matthew L. Moore call for assistance in Q1-cellblock?
I don't know

11/13/12 Questions for Sgt. Heflin

- 1) Did I try to speak with you before this incident with Officer Matthew L. Moore took place? yes
- 2) How did you handle the situation when I came to you?
I told you that I would get with officer Moore, after chew and to stay away from officer Moore.
- 3) Did you give Officer Matthew L. Moore permission to leave his cubicle and enter Q1-cellblock at or around 5:45 pm on 10-29-12? No

Questions for Officer Christian ~~Scanned~~ 11/17/12

1. Did I come to you before this incident with Officer Matthew L. Moore took place? **NO**

2. Did Officer Matthew L. Moore call for assistance in Q1-cellblock when this incident took place? **yes**

Questions for Officer Matthew L. Moore

11/16/12

1. According to A.D.C.'s Rules and Regulations are you permitted to exit your assigned cubicle and enter a cellblock without permission from a supervisor? **NO**

2. Did you have permission to leave your assigned cubicle leaving it unattended and enter Q1-cellblock on 10-29-12 at or around 5:45pm? **NO**

3. What exactly was your reason for leaving your cubicle unattended and entering Q1-cellblock at or around 5:45pm on 10-29-12? I was in the process of writing inmate Darius Mabry B1261108 a disciplinary.

4. Why didn't you call for assistance before you exited your cubicle? I didn't want to call for assistance. I wanted to speak you.

5. How did I assault you when you deliberately came out of your assigned cubicle without permission, leaving it unattended and entered Q1 cellblock where I'm assigned to sleep and use excessive force against me for no apparent reason? you hit me in the face.

6. Did you call for assistance anytime after you exited your cubicle? **NO**